

**IN THE CIRCUIT COURT OF GREENE COUNTY,
STATE OF MISSOURI**

STATE OF MISSOURI, ex rel.)
JEREMIAH W. (JAY) NIXON,)
Attorney General,)
)
Plaintiff,)

v.)

Case No. _____

K&H MITCHELL, INC.)
d/b/a Hague Quality Water of the Ozarks)
Serve: Heather Mitchell, Registered Agent)
732 U.S. 60 East)
Republic, MO 65738)
)
or)
)
533 East Hadley Street)
Republic, MO 65738)
)
)

and)
)
HEATHER MITCHELL)
D.O.B. 6-19-75)
S.S.N. 431-31-1157)
Serve at: 732 U.S. 60 East)
Republic, MO 65738)
or)
533 East Hadley Street)
Republic, MO 65738)
)
)

and)
)
KEITH MITCHELL)
D.O.B. 3-12-1965)
S.S.N. 420-02-8384)
Serve at: 3126 E. Valley Water Mill Rd., Apt. 409)
Springfield, MO 65803)
)
Defendants.)

**PETITION FOR PRELIMINARY AND PERMANENT INJUNCTION,
RESTITUTION, CIVIL PENALTIES AND OTHER RELIEF**

COMES NOW State of Missouri as Plaintiff in this action, by and through its Attorney General Jeremiah W. (Jay) Nixon and Assistant Attorney General Peter Lyskowski, and states as follows:

PARTIES AND JURISDICTION

1. Jeremiah W. (Jay) Nixon is the duly elected, qualified, and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to sections 407.020 and 407.100, RSMo Supp. 2003¹.

2. Defendant K & H Mitchell, Inc. d/b/a Hague Quality Water of the Ozarks (“Hague”), at all times relevant hereto, was a Missouri registered corporation with business locations at 732 U.S. 60 East, Republic, Missouri, and 2914 East 32nd Street, Joplin, Missouri. Hague also owned and operated a third business location at 403 Vandiver Drive, Columbia, Missouri, until September 2, 2003, at which time the Columbia store was sold.

3. Defendant Heather Mitchell (“H. Mitchell”) is an individual, a resident of Missouri, the president and registered agent of Hague.

4. Defendant Keith Mitchell (“K. Mitchell”) is an individual and resident of Missouri. Although the documents on file with the Missouri Secretary of State list H. Mitchell as the president of Hague, upon information and belief, K. Mitchell held himself out as the president/owner of the company. Upon information and belief, at the time of the events alleged herein, K. Mitchell controlled the decision making and day to day operation of Hague.

¹ All references, unless otherwise noted, are to Missouri Revised Statutes Supplemental 2003.

5. For purposes of this Complaint, any references to the acts and practices of Defendant Hague shall mean that such acts and practices are by and through the acts of Defendant Hague's owners, officers, directors, employees, partners, or other agents.

6. This Court has subject matter jurisdiction over this action pursuant to section 407.100, which allows the Attorney General to seek injunctive relief, restitution and penalties in circuit court for violations of section 407.020.

7. Venue is proper in this Court pursuant to section 407.100.7, because the acts described below that are alleged to violate the Missouri Merchandising Practices Act occurred, among other places, in Greene County, Missouri.

THE MISSOURI MERCHANDISING PRACTICES ACT

8. Section 407.020 provides, in pertinent part:

The act, use, or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in Section 407.453, in or from the State of Missouri, is declared to be an unlawful practice.

9. Section 407.100 provides:

1. Whenever it appears to the Attorney General that a person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, he may seek and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such methods, acts, uses, practices, or solicitations, or any combination thereof, or engaging therein, or doing anything in furtherance thereof.

2. In any action under subsection 1 of this section, and pursuant to the provisions of the Missouri Rules of Civil Procedure, the attorney general may seek and obtain temporary

restraining orders, preliminary injunctions, temporary receivers, and the sequestering of any funds or accounts if the court finds that funds or property may be hidden or removed from the state or that such orders or injunctions are otherwise necessary.

3. If the court finds that the person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, it may make such orders or judgments as may be necessary to prevent such person from employing or continuing to employ, or to prevent the recurrence of, any prohibited methods, acts, uses, practices or solicitations, or any combination thereof, declared to be unlawful by this chapter.

4. The court in its discretion, may enter an order of restitution, payable to the state, as may be necessary to restore to any person who has suffered any ascertainable loss, including but not limited to, any moneys or property, real or personal, which may have been acquired by means of any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter. It shall be the duty of the attorney general to distribute such funds to those persons injured.

5. The court, in its discretion, may appoint a receiver to insure the conformance to any orders issued under subsection 3 of this section or to insure the payment of any damages ordered under subsection 4 of this section.

6. The court may award to the state a civil penalty of not more than one thousand dollars per violation; except that, if the person who would be liable for such penalty shows, by a preponderance of the evidence, that a violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, no civil penalties shall be imposed.

7. Any action under this section may be brought in the county in which the defendant resides, where the violation alleged to have been committed occurred, or where the defendant has his principal place of business.

8. The attorney general is authorized to enter into consent judgments or consent injunctions with or without admissions of violations of this chapter. Violation of any such consent judgment

or consent injunction shall be treated as a violation under section 407.110

10. "Advertisement" is defined by section 407.010(1) as "the attempt by publication, dissemination, solicitation, circulation, or any other means to induce, directly or indirectly, any person to enter into any obligation or acquire any title or interest in any merchandise."

11. "Merchandise" is defined by section 407.010(4) as "any objects, wares, goods, commodities, intangibles, real estate or services."

12. "Sale" is defined by section 407.010(6) as "any sale, lease, offer for sale or lease, or attempt to sell or lease merchandise for cash or credit."

13. "Trade or Commerce" is defined by section 407.010(7) as "the advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any property, tangible or intangible, real personal, or mixed and any other article, commodity, or thing of value wherever situated. The terms 'trade' and 'commerce' include any trade or commerce directly or indirectly affecting the people of this state."

STATEMENT OF FACTS

Facts Common to All Counts

14. Plaintiff hereby incorporates by reference all of the allegations contained in paragraphs 1 through 13 above as though fully set forth herein.

15. Since at least August 2002, but at a date certain known to Defendants, Hague has advertised, offered and sold water treatment systems to Missouri consumers.

16. Defendants' employees go to the homes of Missouri consumers and give sales presentations, usually lasting more than two hours, in which they "test" the consumers' tap water for various conditions, including "hardness" and the presence of chlorine.

17. During the sales presentation, Defendants' employees tell consumers that their tap water has a high level of hardness and that the water contains chemicals and substances that have been proven hazardous to their health.

18. During the sales presentation, Defendants' employees routinely tell consumers that Hague's water treatment system will alleviate the hardness and remove all of the harmful chemicals and substances from their water.

19. During the sales presentation, Defendants' employees routinely tell consumers that they will be able to pay for Hague's water treatment system from the savings that the consumers receive from reduced expenses for water and soap that result from using Hague's water treatment system.

20. During the sales presentation, Defendants' employees routinely tell consumers that they will assist the consumers in obtaining financing to pay for Hague's water treatment system and that if the consumers make monthly payments of \$99.00 per month the water treatment system will be paid for in four to five years.

Count I. - Financing

21. Plaintiff hereby incorporates by reference all of the allegations contained in paragraphs 1 through 20 above as though fully set forth herein.

22. Hague utilizes a tiered system to obtain financing for the purchase of Hague's water treatment system.

23. If a consumer has a good credit rating, the consumer will fall into the top tier of the financing system and will qualify for a low interest rate, which will result in the consumer being able to pay off the water treatment system in four to five years by making monthly payments of approximately \$99.00.

24. Consumers with less than good credit ratings fall into one of the lower tiers of the financing system that have increasingly higher interest rates up to 19.9%, which result in interest charges that comprise as much as seventy-five percent of each \$99.00 monthly payment.

25. Due to the excessive interest charges, a consumer that falls into one of the lower tiers of the financing system cannot pay off the water treatment system in four or five years by simply making monthly payments of \$99.00.

26. Defendants' employees do not inform consumers during the sales presentation that if the consumer does not qualify for the low interest top tier financing that Hague will shop the consumer's credit application around to higher interest lower tier financial options in order to obtain financing.

27. Defendants' employees do not inform consumers during the sales presentation that if the consumer does not qualify for the low interest top tier financing that the consumer will be required to make monthly payments greatly in excess of \$99.00 in order to pay off both the principal and interest charges for the water treatment system within four or five years.

28. Defendants' employees do not inform consumers at the time the consumer signs a contract to purchase the water treatment system what the consumer's monthly payment will be and/or how long it will take to pay off the water treatment system.

29. Consumers do not know what their monthly payment will be or how long it will take to pay for Defendants' water treatment system until the consumer receives their first bill in the mail, which is usually a month or later after the consumer has signed a contract to purchase the water treatment system.

30. Defendants' conduct in failing to inform consumers at the time of sale that if the consumer does not qualify for low interest rate financing that Defendants will shop the consumer's credit application around to obtain financing at a higher interest rate constitutes a violation of § 407.020 in that Defendants have engaged in methods, acts, uses and practices of deception, fraud, false pretense, false promise, misrepresentation, unfair practice, and the concealment, suppression and omission of material facts.

31. Defendants' conduct in failing to inform consumers at the time of sale that the consumer will have to make monthly payments in excess of \$99.00 and/or will not be able to pay off the principal and interest charges for the water treatment system within four or five years if the consumer does not qualify for low interest rate financing constitutes a violation of § 407.020 in that Defendants have engaged in methods, acts, uses and practices of deception, fraud, false pretense, false promise, misrepresentation, unfair practice, and the concealment, suppression and omission of material facts.

32. Defendants' conduct in failing to inform consumers at the time the consumer signs a contract to purchase the water treatment system what the consumer's monthly payment will be and/or how long it will take to pay off the water treatment system constitutes a violation of § 407.020 in that Defendants have engaged in methods, acts, uses and practices of deception,

fraud, false pretense, false promise, misrepresentation, unfair practice, and the concealment, suppression and omission of material facts.

33. These unfair and unlawful practices engaged in by Defendants have presented a risk of, and/or have caused, significant injury to consumers.

Count II. - Right of Rescission

34. Plaintiff hereby incorporates by reference all of the allegations contained in paragraphs 1 through 33 above as though fully set forth herein.

35. At the time a consumer agrees to purchase Hague's water treatment system, the consumer is asked to sign a revolving charge sales slip and/or consumer credit document, which includes a statement on its face that the consumer has three days to terminate the sale from the date of the transaction; however, Defendants' employees typically do not verbally inform consumers of the three day right of rescission.

36. On more than one occasion, Defendants' employees have told consumers that they have until installation to terminate the transaction.

37. On at least one occasion, an employee of Defendants' has told a consumer that the consumer has a 60 day trial period to use the water treatment system and can terminate the transaction any time prior to the expiration of the trial period.

38. Consumers that have attempted within the specified time-frame to cancel the purchase of the water treatment system based on the representations of Defendants' employees have been denied by Defendants and are told that they were only entitled to a three day right of rescission regardless of what was said during the sales presentation.

39. Defendants' conduct in providing false information to the consumer regarding the consumer's right of rescission constitutes a violation of § 407.020 in that Defendants have engaged in methods, acts, uses and practices of deception, fraud, false pretense, false promise, misrepresentation, unfair practice, and the concealment, suppression and omission of material facts.

40. Defendants' conduct in failing to honor the right of rescission period that consumers relied on based on the representations made by Defendants' employees constitutes a violation of § 407.020 in that Defendants have engaged in methods, acts, uses and practices of deception, fraud, false pretense, false promise, misrepresentation, unfair practice, and the concealment, suppression and omission of material facts.

41. These unfair and unlawful practices engaged in by Defendants have presented a risk of, and/or have caused, significant injury to consumers.

Count III. - Water Tests

42. Plaintiff hereby incorporates by reference all of the allegations contained in paragraphs 1 through 41 above as though fully set forth herein.

43. On at least one occasion, an employee of Defendants' told a consumer who was currently using an Ecowater water treatment system that, based on the water test performed by the employee (27 gpg [grains per gallon]-outdoor and 25 gpg-indoor), the consumer's water had excessive levels of hardness and harmful bacteria.

44. Based on the testing information provided by Defendants' employee, the consumer purchased Hague's water treatment system.

45. The water test utilized by the Hague employee to test the consumer's water does not and cannot test for bacteria levels in water.

46. A later check of the consumer's water indicated that the hardness of the water in the consumer's Ecowater water treatment system tested at 10 gpg and the tap water tested at 21 gpg.

47. Due to the discrepancies in the test results, the consumer contacted the water supply district, who confirmed that the hardness of the water in the district at the time the Hague employee tested the consumer's water was 21.6 gpg.

48. Defendants' conduct in providing false test results to the consumer in order to facilitate the sale of the water treatment system constitutes a violation of § 407.020 in that Defendants have engaged in methods, acts, uses and practices of deception, fraud, false pretense, false promise, misrepresentation, unfair practice, and the concealment, suppression and omission of material facts.

49. These unfair and unlawful practices engaged in by Defendants have presented a risk of, and/or have caused, significant injury to consumers.

Count IV. - Health Benefits

50. Plaintiff hereby incorporates by reference all of the allegations contained in paragraphs 1 through 49 above as though fully set forth herein.

51. On at least one occasion, an employee of Defendants' presented articles and told a consumer that Hague's water treatment system would improve the asthma and eczema of the consumer's son.

52. Based on the health benefit information provided by Defendants' employee, the consumer purchased Hague's water treatment system.

53. To date, the consumer's son has not experienced any improvement.

54. Defendants' conduct in providing false and/or misleading health benefit information to the consumer in order to facilitate the sale of the water treatment system constitutes a violation of § 407.020 in that Defendants have engaged in methods, acts, uses and practices of deception, fraud, false pretense, false promise, misrepresentation, unfair practice, and the concealment, suppression and omission of material facts.

55. These unfair and unlawful practices engaged in by Defendants have presented a risk of, and/or have caused, significant injury to consumers.

Count V. - Free Move

56. Plaintiff hereby incorporates by reference all of the allegations contained in paragraphs 1 through 55 above as though fully set forth herein.

57. On more than one occasion, Defendants' employees have told consumers when they purchased the water treatment system that if the consumer moved at any time that Hague would move and install the water treatment system for free one time.

58. Consumers that have moved and requested the free move and installation by Hague have been refused because at the time of the sale the employee did not include the free move and installation on the contract.

59. Defendants' conduct in failing to honor the free move and installation that consumers relied on based on the representations made by Defendants' employees constitutes a violation of § 407.020 in that Defendants have engaged in methods, acts, uses and practices of

deception, fraud, false pretense, false promise, misrepresentation, unfair practice, and the concealment, suppression and omission of material facts.

60. These unfair and unlawful practices engaged in by Defendants have presented a risk of, and/or have caused, significant injury to consumers.

PRAYER FOR RELIEF

WHEREFORE, the Attorney General prays this Court for the following relief:

1. An Order of this Court finding that Defendants have violated the provisions of § 407.020.
2. A Preliminary and Permanent Injunction issued pursuant to § 407.100 prohibiting and enjoining Defendants and their agents, servants, employees, representatives and other individuals acting at their direction or on their behalf, who have notice of the Injunction, from violating § 407.020 through the use of any of the unlawful, unfair and deceptive acts and practices alleged herein.
3. An Order of this Court requiring Defendants, to provide full restitution to all consumers from whom Defendants have received monies who have been aggrieved by the use of any of the unlawful, unfair and deceptive acts and practices alleged herein.
4. An Order of this Court awarding the State a civil penalty from Defendants of One Thousand Dollars (\$1,000.00) per violation of § 407.020 that the Court finds to have occurred.
5. An Order of this Court ordering Defendants to pay to the State an amount of money equal to ten percent (10%) of the total restitution ordered against said Defendants, or such other amount as the Court deems fair and equitable.

6. An Order of this Court requiring Defendants to pay all court and investigative and prosecution costs of this case.

7. Any further relief the Court deems just and equitable in this action.

Respectfully submitted,

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